cused shall be tried in the county or district in which the crime was committed. In a leading case in that State, the defendants had been indicted in Munro County for murder, and on the order of the court the venue was changed in the county of Blount. The defendants were there convicted, motion for a new trial being refused. The defendants then moved in arrest of judgment, which motion was sustained and judgment on the verdict arrested. On appeal, the Supreme Court of Appeals of Tennessee sustained the Circuit Court of Blount County in refusing judgment on the verdict. Judge Hall, in his opinion, said, "The right of the accused to be tried in the county in which the offense is alleged to have been committed is a right secured to him by the Constitution of the State, and of which he cannot, in any case, be deprived without his consent given in open court." [2]

The scope of this note does not permit dealing with the subject at length, but in general it may be said that while no case has been found construing the word "vicinage" in such a provision, the decisions throughout the country are unanimously to the effect that in those States whose Constitutions secure to accused persons the right to be tried in the "county or district" where the crime was committed a change of venue can be made only with the consent of the accused.[3]

We therefore submit that Article I, § 8 was drawn under the modern conception of the definition of the word "vicinage", that it was the intent of the drawers to secure to accused persons the privilege of trial in the county wherein the offense had been committed, and that part of § 4914 of the Virginia Code of 1919 permitting a change of venue on motion of the Commonwealth, and against the objection of the accused, is unconstitutional and void.

W. R. A.

DEATH BY WRONGFUL ACT—RIGHT OF ADMINISTRATOR OF WIFE TO SUE HUSBAND.—The Virginia Statute of Death by Wrongful Act, while seemingly broad and comprehensive in its scope, is yet deficient in one important, though rather unique respect; it is so worded that where the death of one consort is caused by the wrongful act of the other, no action can be maintained against the guilty party by the personal representative of the deceased.

The Virginia Code of 1919, § 5786, reads in part as follows: "Whenever the death of a person shall be caused by the wrongful act, neglect or default of any person or corporation * * * and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action,

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[2] State *v.* Denton, 6 Cold. (Tenn.) 539.

[3] Dougan *v.* State, 30 Ark. 41; State *v.* Knapp, 40 Kan. 148, 19 Pac. 728; Wheeler *v.* State, 24 Wis. 52; *Ex parte* Rivers, 40 Ala. 712; CLARK, CRIMINAL PROCEDURE, p. 486.

etc.", thus making the right of action under the statute dependent on the rights of the injured party had he or she survived. But it has been held generally that statutes conferring on married women the right to sue and be sued as though sole do not remove the common law disability of either consort to sue the other for a personal tort.[1] Hence the logical decision of the Virginia Court that, in no case, could the personal representative of one consort recover against the other for death by wrongful act.[2]

This defect is not common to all statutes of Death by Wrongful Act. For example, under the Kentucky statute, a recovery was allowed against the defendant, who had killed his wife, in favor of the decedent's children.[3] This recovery was predicated on the fact that, under the statute, where there are children surviving the decedent, they get one half of the recovery. Under the same statute, the surviving spouse gets the whole recovery if there are no children, thus defeating the action, as the defendant is then the sole beneficiary. This was the decision in an earlier Kentucky case.[4]

DISPOSITION OF PERSONAL ESTATE OF MARRIED PERSONS—AMENDMENT TO THE CODE.—§ 5276 of the Virginia Code of 1919 provides:

> "When any provision for a *wife* is made in her husband's will *she may,* within one year from the time of admission of the will to probate, renounce such provision. * * * If such renunciation be made, or if no provision for her be made in the will, she shall have such share of the husband's personal estate as she would have had if he had died intestate."

By § 5273 of the Code the surviving husband or wife is made sole distributee of a deceased consort dying intestate and without issue. It would seem then that the practical effect of § 5276 was to render it impossible for a husband to bequeath personalty by testamentary document in such manner that his wife could not secure it, in cases where there was no surviving issue, since she might renounce the will and have such share of the husband's personal estate as she would have taken had he died intestate.

On the other hand, § 5134 of the Code gives to married women the right to "acquire, hold, use, control, and dispose of property as if unmarried". This, of course, includes the power to dispose of personal estate by will. In the event of a married woman's

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[1] Thompson *v.* Thompson, 218 U. S. 611, 30 L. R. A. (N. S.) 1153, 21 Ann. Cas. 921; Strom *v.* Strom, 98 Minn. 427, 107 N. W. 1047, 6 L. R. A. (N. S.) 191, 116 Am. St. Rep. 387.

[2] Keister's Admr. *v.* Keister's Ex'rs, 123 Va. 157, 96 S. E. 315, 1 A. L. R. 439.

[3] Robinson's Admr's *v.* Robinson (Ky.), 220 S. W. 1074.

[4] Dishon's Adm'r *v.* Dishon's Adm'r, 187 Ky. 492, 219 S. W. 794.